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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,525	12/20/2000	Paul E. Fumer	J-2992A	9996

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EXAMINER

BARROW, JAMES G

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 05/20/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,525

Applicant(s)

FURNER ET AL. 

Examiner

James G. Barrow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21,24-26 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28 and 31 is/are allowed.
- 6) ☐ Claim(s) 21,24-26,28-30 and 32-37 is/are rejected.
- 7) ☐ Claim(s) 28 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21, 24-26, 29, 30 and 32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Neil (4,206,500). Neil discloses a candle having a metal wick holder, in figure 3. It is the Examiner's position that wick holder 38 has fins and transmits heat to the surrounding fuel and to the container. The composition of the container 11 is not disclosed, however it is the position of the Examiner that unless it is disclosed as being made of insulating material it will conduct heat. Regarding claim 25, one of the disclosed fuels is tallow. Regarding claims 26 and 32, it is the Examiner's position that as the wick burns the solid fuel melts creating a pool and that the sides of the wick holder 38 are fins that conduct heat to the fuel. Regarding claim 30, Neil discloses the solid fuel has a low melting point and that the size of the wick can be adjusted to control brightness. It is the Examiner's position that selecting a solid fuel, wick or wick holder forming a pool that exceeds 180°F 10 mm or about 160°F at 20 mm from the wick is an engineering choice.

Claims 33, 34, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Jung (DE 3403604). Jung discloses the invention as claimed including a consumable wick 8 (see page 7, line 36), solid fuel made of wax (see page 7, line 22), a

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starter bump (bulge 9) separated from the wick 8 by indent 10. Fig. 3 shows the metal container 3 directing the flow of liquid contents to the wick. Because the container 3 is made of metal, a heat conductive material, and this metal container is attached to the heat conductive tube 4, it is configured to melt a solid fuel element, at least to some degree.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jung (DE 3403604) in view of Tsuda et al (GB 1514338). Jung discloses the invention substantially as claimed with the exception of a heat conductive element selected from the group consisting of lobes and wick holders with fins. Tsuda et al. discloses a heat conductive tube 20 and teaches the use of a heat-receiving portion 21 to conduct heat from the flame downwards through the tube 20. Figs. 1, 9, and 13 show the heat-receiving portion 21 in the form of lobes or wick holders with fins. As shown in the figures, the heat-receiving portion 21 cooperatively engages the fuel element by way of the tube 20. Giving the claims the broadest reasonable interpretation, the lobes or wick holders with fins reads on portions 21a and 131 in Tsuda et al. Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the container and candle of Jung with a heat conductive element in the form of

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heat receiving portion 21 in the form of lobes or wick holders with fins as taught by Tsuda et al. to conduct heat from the flame downwards through the tube 20.

Allowable Subject Matter

Claims 28 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 21, 24-26, 29, 30, and 32 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 4/22/03 have been fully considered but they are not persuasive. Regarding Applicant's traverse of rejection of the claims 33, 34 and 36. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the flame descending into the cup) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Regarding Applicant's argument Jung does not teach the cup melting the wax it is the Examiner's position that the cup is disclosed as being made of metal which conducts heat, the wick holder is attached to the cup by a heat resistant adhesive not a heat insulating adhesive, and figure 3 does not prove the wick holder does not heat the cup but may only to some degree. Regarding Applicant's traverse of the rejection of claims 33, 34, and 36. In response to applicant's arguments, the recitation "a solid

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replacement" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the separable wick holder) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Regarding claim 36, it is the Examiner's position the flat bottom of Jung allows the wax to flow to the wick. Regarding the Applicant's traverse of the rejected claims 35 and 37. The Examiner has already responded to the Applicant's arguments over the validity of Jung above. Regarding Applicant's argument that Jung or Tsuda do not teach "selected from a group of lobes and wick holder with fins" it is the Examiner's interpretation of this phrase that the cited art has to either have a lobe or a wick holder to meet these limitations. The Examiner interprets the structure of the lobe as being part of the melting plate. Since the wick holder of Jung is adhesively attached to the cup and transfers heat to the fuel it is a lobe. The wick holder of Tsuda has fins.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Colthar et al (6,454,561) discloses a wick holder that transfers heat to the surface of the solid fuel support. Kayne (4,224,017) and F. Marchi (3,285,094) disclose a support for a candle solid fuel holder. F.D. Oesterle et al (RE 24423) discloses a replaceable solid fuel element. Spaulding (5,843,194) discloses a solid fuel candle formula containing a gel. Schirneker (DE 2737652), Lee (3,910,753) and Schirneker (4,185,953) disclose wick holders having fins. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

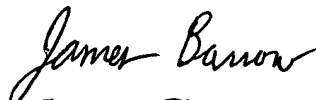
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Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Barrow whose telephone number is (703) 305-5427. The examiner can normally be reached on M-F, 9:30 A.M.-6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on (703) 308-0101. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-9301 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.


James Barrow
May 13, 2003


Henry Bennett
Supervisory Patent Examiner
Group 3700